Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd

HIGH COURT (TEMERLOH) — CIVIL SUIT NO 22–29 OF 2001
MOHAMED APANDI JC
9 SEPTEMBER 2003

Civil Procedure — Jurisdiction — Inherent jurisdiction of court — Whether inherent powers applicable to application for vacant possession — Whether application for vacant possession to be made under specific rules —Rules of the High Court 1980 O 92 r 4

The plaintiffs and defendant entered into certain contracts but as a result of disagreements, the plaintiff filed a writ of trespass and obtained an interim injunction('the injunction') against the defendant as a result of which the defendant had to vacate the land. The injunction however was subsequently set aside. The plaintiffs being unhappy with the decision appealed but pending the appeal the plaintiff applied for and obtained an *Erinford* injunction and continued to occupy the land. The plaintiffs' appeal was subsequently dismissed by the Court of Appeal and in its decision the Court of Appeal granted the defendant the liberty to apply for 'consequential order or any other order before the judge of the High Court of Temerloh' ('the order'). Pursuant to this order the defendant applied by virtue of O 92 r 4 of the Rules of the High Court 1980 ('the RHC') for vacant possession of the land. This application was made in order to maintain the status quo. The defendant argued that since the injunction was set aside, the plaintiff had not right to remain in occupation of the land. The plaintiff on the other hand submitted that an order for vacant possession must be made under specific provisions of the law and that O 92 r 4 of the RHC is not applicable. The issues for consideration were: (a) whether the court was properly moved and whether the application was procedurally proper; and (b) whether the applciation should be granted.

Held, allowing the appeal:

(1) The scope of O 92 r 4 of the RHC is very wide. It is a procedural rule and is not intended to alter substantive rights bearing in mind that the key words in the rule are '… to make any order as may be necessary to prevent injunstice or to prevent an abuse of the process of the court.' (see para 23).

(2) The inherent jurisdiction of the court may be exercised in any given case, notwithstanding that there are rules of court governing the circumstances of such case. The powers conferred by the rules of court are generally speaking, additional to and not in substitution of powers arising out of the inherent jurisdiction of the court (see para 26).

(3) The inherent powers involve the application of natural justice and enables the court to make any orders as may be necessary to prevent injustice or to prevent an abuse of the powers of the court. The court therefore has the jurisdiction to hear the application (see paras 31–32).

[Bahasa Malaysia summary

Plaintif-plaintif dan defendan-defendant telah memasuki dalam beberapa kontrak tetapi akibat daripada beberapa pertikaian, plaintif telah memfailkan writ menceroboh dan memperoleh satu injunksi interim ('injunksi tersebut') terhadap defendan di mana defendan hendaklah mengosongkan tanah tersebut. Injunksi tersebut bagaimanapun telah diketepikan kemudiannya. Plaintif-plaintif yang tidak gembira dengan keputusan tersebut telah merayu tetapi masih menunggu sehingga rayuan plaintif yang memohon untuk mendapat satu injunksi *Erinford* dan terus menetap atas tanah tersebut. Rayuan plaintif-plaintif telah ditolak akhirnya oleh Mahkamah Rayuan dan dalam keputusannya, Mahkamah Rayuan telah memberikan defendan kebebasan untuk memohon 'consequential order or any other order before the judge of the High Court of Temerloh' ('perintah tersebut'). Menurut perintah tersebut, defendan telah memohon menurut A 92 k 4 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') untuk milikan kosong tanah tersebut. Permohonan ini telah dibuat bertujuan untuk mengekalkan status quo. Defendan telah berhujah bahawa memandangkan injunksi tersebut telah diketepikan, plaintif tiada hak untuk terus menetap atas tanah tersebut. Plaintif sebaliknya berhujah bahawa satu perintah untuk milikan kosong perlu dibuat di bawah peruntukan spesifik undang-undang dan bahawa A 92 k 4 KMT tidak terpakai. Persoalan-persoalan untuk ditentukan adalah: (a) sama ada mahkamah telah membuat keoutusan yang betul dan sama ada permohonan tersebut mengikut prosedur yang betul; dan (b) sama ada permohonan tersebut patut dibenarkan.

Diputuskan, membenarkan rayuan tersebut:

(1) Skop A 92 k 4 KMT amat luas. Ia adalah satu kaedah prosedur dan bukan bertujuan untuk mengubah hak-hak substantif dengan mengambilkira perkataan-perkataan dalam kaedah tersebut adalah '… to make any order as may be necessary to prevent injunstice or to prevent an abuse of the process of the court.' (lihat perenggan 23).

(2) Bidang kuasa sedia ada mahkamah boleh digunakan dalam apa-apa kes yang diberi, meskipun terdapat kaedah-kaedah mahkamah yang mengawal keadaan kes sedemikian. Kuasa-kuasa yang diberikan oelh kaedah-kaedah mahkamah tersebut secara amnya membincangkan, tambahan dan bukan gantian kuasa-kuasa yang terdapat dalam bidang kuasa sedia ada mahkamah (lihat perenggan 26).

(3) Kuasa-kuasa sedia ada tersebut melibatkan pemakaian keadilan asasi dan membolehkan mahkamah membuat apa-apa perintah yang difikirkan perlu untuk mengelakkan ketidakadilan berlaku atau menghalang penyalahgunaan kuasa-kuasa mahkamah. Mahkamah oleh itu mempunyai bidang kuasa untuk mendengar permohonan tersebut (lihat perenggan-perenggan 31–32).]

Notes

For cases on inherent jurisdiction of the court, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3797–3807.

Cases referred to

American Cyanamid Co v Ethicon Ltd [1975] AC 396 (refd)
Garden Cottage Foods Ltd v Milk Marketing Board [1983] 2 All ER 770 (refd)
Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193 (refd)
Megat Najmuddin Dato' Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd [2002] 1 MLJ 385
Motor Emporium, The v V Arumugam [1933] MLJ 276 (refd)
Pacific Centre Sdn Bhd v United Engineers (Malaysia) Bhd [1984] 2 MLJ 143
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145 (refd
Tan Chwee Geok & Anor v Khaw Yen-Yen & Anor [1975] 2 MLJ 188 (refd)
Tan Soo Bing & Ors v Tan Kooi Fook [1996] 3 MLJ 457 (refd)
TR Hamzah & Yeang Sdn Bhd v Lazar Sdn Bhd [1985] 2 MLJ 45 (refd)
United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin [2001] 1 MLJ 561 (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 25(2), 70, para 6, Schedule
Interpretation Act 1967 s 3
National Land Code s 417
Rules of the High Court 1980 O 1A, O 2 r 3, O 92 r 4

Dato' Bastion Pius Vendargon (GJ Goldie with him) (Vendargon & Partners) for the plaintiffs.
Dato' Arif Mahindar (Sahadin with him) (Sahadin & Co) for the defendant.

Mohamed Apandi JC:

Introduction

[1] This is an application by way of summons in chambers by the defendant (Kertas Mahkamah No 110) for:

1 Bahawa diatas penolakan injunksi interim di sini satu perintah konsekuntial dibuat bagi mengekalkan status quo pihak-pihak di sini iaitu sebelum pihak-pihak di sini menandatangani dan memeterai Perjanjian-Perjanjian yang disebut dalam permohonan Plaintif-Plaintif mengikut alasan penghakiman Yang Arif Hakim Dato' Ramly bin Mohd Ali pada 2 April 2000.

2 Mengikut akujanji-akujanji Plaintif-Plaintif seperti yang disebut di dalam Permohonan Plaintif-Plaintif bertarikh 26 September 2001 (Kandungan 4) dan Perintah yang sama tarikh Permohonan bertarikh 1 Oktober 2001 (Kandungan 12) dan Perintah bertarikh 15 Oktober 2001 dan Perintah bertarikh 26 April 2002, satu perintah dibuat bahawa ganti rugi Defendan/Pemohon di sini hendaklah ditaksirkan dari 26 September 2001 hingga ke hari ini dan berterusan

sehingga Plaintif-Plaintif mengosongkan aset-aset dan tanah-tanah ladang seperti yang disenaraikan di dalam Injunksi Interim. A

DAN supaya kos bagi dan yang berlaku bagi permohonan ini dijadikan kos dalam kausa.

[2] The matter was heard on 27 June 2002 and continued on 7 July 2003, where I allowed the application and the plaintiffs being dissatisfied with the decision, filed an appeal. B

Brief history of the application

[3] Before going into the grounds of my decision, it is pertinent to briefly outline the history of the case leading to the application (KM No 110) by the defendant. C

[4] The main action in Civil Suit No 22–29 of 2001 was filed by the plaintiffs on 26 September 2001 for an alleged trespass to land which plaintiffs claimed to have beneficial interest pursuant to various agreements between the parties, all dated 20 November 1998. On the day of the filing of the action against the defendant, the plaintiffs obtained an interim injunction by way of an ex parte application. This was on 26 September 2001. Then, on 15 October 2001 by consent of the defendant the interim injunction was extended until final disposal by way of inter parte hearing (as per Kertas Mahkamah No 12). D E

[5] In the meantime, the defendant filed their statement of defence and counterclaim on 13 October 2001. The defendant among other pleadings, claimed that the agreements dated 20 November 1998 were null and void and sought the court's declaration and claimed for vacant possession.

[6] After some delay, the interim injunction, originally obtained on 29 September 2001 was set aside, after an inter parte hearing (Kand No 12) on 2 April 2002. Since 29 June 2001, the defendant vacated the land, (which was the subject matter of the litigation) and the plaintiffs moved in and took possession of the land. F

[7] The plaintiffs, not happy with the setting aside order given on 2 April 2002, filed an appeal in the Court of Appeal. In the meantime, the plaintiffs filed and obtained an *Erinford* Injunction pending disposal of the said appeal in the Court of Appeal, on 26 April 2002. By virtue of the said *Erinford* Injunction, the plaintiffs remained in occupation of the disputed land. G

[8] The Court of Appeal, vide Civil Appeal No C–02–247 of 2002, heard and disposed of the appeal by the plaintiffs on 12 May 2003. The appeal was dismissed. After some dispute over the actual wordings of the Court of Appeal's decision and order in dismissing the plaintiffs' appeal, it was finally agreed that, inter alia, upon dismissing the appeal the Court of Appeal made an additional order, pursuant to an oral application by the defendant (respondent), that the defendant (respondent) is given the liberty to make an application for 'consequential order or any other further order before the judge of the High Court in Temerloh'. That order gives birth to this H I

Application by the defendant as per Kertas Mahkamah No 110.

The application in KM 110

[9] At the outset of the hearing of the application, I sought clarification and confirmation, from both parties, that in essence the application KM110 is an application for vacant possession in order to maintain the status quo. Both parties confirmed the position and situation.

[10] The learned counsel Dato' Arif Mahindar, for the defendant/applicant, in an extremely brief three-minute submission, stated that by virtue of the decision of the Court of Appeal, no injunction exists anymore and that he was making the application under O 92 r 4 of the Rules of the High Court 1980 ('the RHC'). Counsel said, all facts and details are as before the court, as contained in the thick fat bundle identified as KM110.

[11] The learned counsel, Dato' Bastian Pius Vendargon, for the plaintiffs, in his usual eloquent style submitted at length as to why the application was opposed. It was submitted that it may amount to a variation, amendment, addition or substraction of the earlier order and further argued such an order can only be given in exceptional situations such as slip-rule, fraudulent abstraction or functus officio. It was also submitted that an order for vacant possession must be made under specific provisions of the law. It was also argued by plaintiffs' counsel that where there is a specific statutory provision, O 92 r 4 of the RHC is not applicable and that the said order is for procedural remedy and not to be used for substantive reliefs.

[12] On the day fixed for continued hearing, the learned counsel for the plaintiffs further argued that since the application is for vacant possession and that the issue is the validity of the agreements between the parties, therefore, it can only be given after the issue has been adjudicated. Counsel also said that it tantamounts to obtaining a summary judgment, and that in view of a few other actions involving same parties, plaintiffs are entitled to the benefit of doctrines of legitimate expectations and estoppel. The crux of plaintiffs' argument is that a mandatory injunction, in the form of vacant possession order, should not be given, until all the legal issues between the parties has been adjudicated, ie at the main hearing and not 'in midstream' of the case. Finally, counsel for plaintiffs also submitted that status quo should be construed to be before the writ was issued and that the whole application was misconceived in law.

[13] Learned counsel for the defendant, Dato' Ariff Mahindar, in reply, argued that the plaintiffs have been in occupation of the land for purposes of the corporatization exercise as reflected in the agreements between the parties. Counsel submitted that the defendant had all the while complied with the court orders, namely the interim injunction and the *Erinford* injunction, and as such it is the defendant who ought to benefit from the doctrine of legitimate expectations. Counsel for defendant further argued that the status quo should be the position before the execution of the agreements between the parties, and that there is no longer any basis for the

Defendant to vacate the land, and therefore an order ought to be given for the plaintiffs to vacate and revert back to the original status, until the whole (main) case been finalized.

Issues to be decided by court

[14] Based on the submissions and arguments before me, I conclude that there are two main issues to be decided by me, namely:

(a) whether the court is properly moved and that the application is procedurally proper; and

(b) whether the application should be granted.

[15] Before coming to the decisions to be made, it is appropriate to put matters in their proper perspective and understanding, vis-a-vis the application for *consequential orders and status quo.* In fact, before touching on the issue of the procedural defect or otherwise of the application, it is imperative to fully appreciate what is meant by status quo in the context and history of this case.

Status quo

[16] Statuo quo, to my mind, is relative to time and incident. Status quo is a position *going back* to the original position and circumstance prior to the occurence of a certain action, omission or incident. It is reverting or returning back to the parties' original position. It is associated with moving back to past positions and situations. In most cases, status quo is retained or reverted, to by an injunction order. The injunction is just the means, to achieve the end; i.e. the status quo.

[17] What is status quo? Lord Diplock in *Garden Cottage Foods Ltd v Milk Marketing Board* [1983] 2 All ER 770 at p 774 said:

> The history of the trading relations between the company and the board, as I have outlined them, make it difficult to identify what was the relevant status quo which it was said in the *American Cyanamid* case it is a counsel of prudence to preserve *when other factors are evenly balanced.* The status quo is the existing state of affairs; but since states of affairs do not remain static this raises the query: existing when? In my opinion, the relevant status quo to which reference was made in the *American Cyanamid* case is the state of affairs existing during the period immediately preceding the issue of the writ claiming the permanent injunction or, if there be unreasonably delay between the issue of the writ and the motion for an interlocutory injunction, the period immediately preceding the motion. The duration of that period since the state of affairs last changed must be more than minimal, having regard to the total length of the relationship between the parties in respect of which the injunction is granted; *otherwise the state of affairs before the last change would be the relevant status quo.* (Emphasis added).

[18] Coming to the case at hand, after considering the facts of the case and history of the relationship between the plaintiffs and the defendant, I conclude that the relevant status quo is the time *before* the signing of the agreements dated 20 November 1998. I find that the *causa causans* of the action by the plaintiffs and the counterclaim by the defendant is on the

question of the validity of the said agreements. The claim by the plaintiffs and the counterclaim by the defendant is on the question of the validity of the said agreements. The alleged action in trespass by the plaintiffs, was as a result, of the dispute over the validity of the agreements. The defendant claimed that the agreements were void ab initio because the condition precedents had not been complied with. Who has the right over the land in dispute also centres over the issue of the validity of the agreements. It is not in dispute that the defendant are the registered proprietors of the said land. The plaintiffs merely obtained beneficial rights over the said land by virtue of the disputed agreements.

[19] Therefore, the proper and relevant status quo will obviously be the time and position prior to the signing of the said agreements, ie before 20 November 1998.

[20] In the context of the history of this case, I also find that what is actually meant by 'application for consequential order' as ordered by the Court of Appeal when dismissing the plaintiffs' appeal on 12 May 2003, is an application for an order to preserve the status quo, before the coming into existence of the interim injunction that was subsequently set aside, and upheld by the Court of Appeal.

[21] However, my finding of the meaning of the order given on 12 May 2003, does not in anyway compel me to give the order to preserve the status quo. The order merely meant that the application is to be heard by the High Court in Temerloh, and whatever order or any other consequential order is be judiciously decided.

The inherent powers under O 92 r 4 of the RHC

[22] Order 92 r 4 of the RHC reads as follows:

> 4 Inherent powers of the Court (O 92 r 4)
>
> For the removal of doubts it is hereby declared that nothing in these rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[23] The scope of this provision is very wide. It is a procedural rule and is not intended to alter substantive rights. The key words in the rule are: '... to make any order as may be necessary to *prevent injustice* or to prevent an abuse of the process of the court.'

[24] To appreciate the meaning of 'inherent powers', it will suffice to quote a few decisions that commented on them.

[25] In the case of *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145, at p 238 Edgar Joseph Jr FCJ said:

> In my view, O 92 r 4 is a unique rule of court for while it neither defines nor gives jurisdiction, yet it serves as a *reminder and confirmation* — lest we forget — of the common law powers of the Court, which are residuary or reserve powers and a separate and distinct source of jurisdiction from the statutory powers of the court.

In other words, even without O 92 r 4, the inherent powers of High Court would still be there. In the United Kingdom, for instance, there is no provision in the Supreme Court Rules, equivalent to our O 92 r 4, yet the inherent powers occupy a position of great importance in the High Court there as the article by Sir Jack Jacob amply demonstrates. And, the Court of Appeal there also exercises an inherent jurisdiction (see *Aviagents v Balstravest Investment Ltd* [1966] 1 WLR 150) notwithstanding the absence of any provision in any written law or rule of court providing for inherent powers.

Similarly, I have no doubt that in this country, the Court of Appeal and the Federal Court also exercise inherent jurisdiction. And lest we forget, at the risk of repetition, supervisory jurisdiction is the creature of the common law and is available in the exercise of the court's inherent power though its extent may be determined not merely by judicial development but also by legislative intervention, as for example, para 1 of the Schedule read together with s 25 of the Courts of Judicature Act 1964.

[26] In the above quoted case, Edgar Joseph Jr FCJ extensively agreed with the observations of Sir Jack Jacob QC in his article, '*The Inherent Jurisdiction of the Court*' (1980) Current Legal Problems 23, of which I shall requote and reads as follows, at p 25:

The inherent jurisdiction of the court may be exercised in any given case, *notwithstanding that there are rules of court governing the circumstances of such case.* The powers conferred by rules of court are, generally speaking, additional to, and not in substitution of, powers arising out of the inherent jurisdiction of the court. The two heads of powers are generally cumulative, and not mutually exclusive, so that in any given case, the court is able to proceed under either or both heads of jurisdiction. (Emphasis added).

[27] at p 27:

… the jurisdiction to exercise these powers was derived, not from any statute or rule of law, but from the very nature of the court as a superior court of law, and for this reason such jurisdiction has been called 'inherent'. This description has been criticized as being 'metaphysical', but I think nevertheless that it is apt to describe the quality of this jurisdiction. For the essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused. Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute. Without such a power, the court would have form but would lack substance. The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law.

[28] and at p 51:

… the inherent jurisdiction of the court may be defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.

[29] The same learned judge, in *Pacific Centre Sdn Bhd v United Engineers (Malaysia) Bhd* [1984] 2 MLJ 143 in agreeing with the above-said learned author, said at p 147:

A It is also clear that the inherent jurisdiction of the Court includes all the powers that are necessary 'to fulfil itself as a Court of Law'; to uphold, to protect, and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner.

[30] And on O 92 r 4 of the RHC, the learned judge at p 148 said:

B The Rules of the High Court were enacted in exercise of the powers conferred by s 70 of the Courts of Judicature Act 1964, with the consent of the Chief Justices of Malaya and Borneo and the Rules Committee and are comprised in PU(A) 50 which is clearly subsidiary legislation within the meaning of section 3 of the Interpretation Act 1967. The Rules in my opinion, were rules of practice.

C **[31]** Inherent powers involve the application of principles of natural justice. This inherent powers existed way back before the existence of the RHC. This case can be seen in the case of *The Motor Emporium v V Arumugam* [1933] MLJ 276, where Terrel, Acting CJ held:

D It is said that the English rules of equity, as administered by the Court of Chancery, have no application in the Federated Malay States, as the Court has not been given the jurisdiction of the Court of Chancery, nor is there any Civil Law Enactment incorporating into the law of the Federated Malay States the equitable principles applied in England. This is perfectly true so far as it goes, but under section 49(i) of the Courts Enactment, the Supreme Court has the widest possible jurisdiction in all suits, matters and questions of a civil nature, and although the legislature has given no indication on what principles such E jurisdiction should be exercised, every Court must have inherent jurisdiction to do justice between the parties, and apply such principles as are necessary or desirable for attaining such object, and for giving decisions which are in conformity with the requirements of the social conditions of the community where the law is administered. Looked at in this light, it would hardly be reasonable to exclude in the Federated Malay States a principle of natural justice F merely because a not less civilize d community, namely England, has adopted such a principle as part of its recognize d legal system. On the contrary, it is a cogent reason for adopting the same principle in the Federated Malay States.

The Courts of the Federated Malay States have on many occasions acted on equitable principles, not because English rules of equity apply, but because such rules happen to conform to the principles of natural justice.

G **[32]** In the Federal Court case of *TR Hamzah & Yeang Sdn Bhd v Lazar Sdn Bhd* [1985] 2 MLJ 45 reference was also made to the provisions of O 92 r 4 which reminds the High Court of its inherent powers to make any orders as may be neccessary to prevent injustice or to prevent an abuse of the process of the court.

H **[33]** On the issue of preserving status quo, it is heartening to note that the Federal Court in *Tan Soo Bing & Ors v Tan Kooi Fook* [1996] 3 MLJ 457, in a matter involving registrar's caveat, after having concluded that it was ultra vires the powers conferred upon the registrar under s 417 of the National Land Code to have entered the caveat, the court, however, I maintained the so-called ultra vires caveat because, in its words: '... in order that justice be served, it was necessary that the status quo should be maintained till all the disputes among the parties were resolved.'

Current judicial thinking

[34] In coming to my decision, I have also noted the current judicial trend of doing away with procedural defect, and on that basis the interest of justice shall prevail over such defect.

[35] See case of *United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2001] 1 MLJ 561, where the court held that in the interest of justice, an application should not be struck out on procedural defect. In *UMBC v Ernest Cheong Yong Yin*, Ahmad Fairuz JCA (as he then was) quoted with approval what was said in *Tan Chwee Geok & Anor v Khaw Yen-Yen & Anor* [1975] 2 MLJ 188 at p 189:

> The rules of the Supreme Court are intended to facilitate, not impede, the administration of civil justice.
>
> In the bad old days in England from where we took our Rules, if you put a comma wrong you were thrown out of court, so strict were they about technicalities.
>
> But over the years this strictness gave way to common sense, and every time the Rules were amended it was with the object of removing fussy technicalities, and making it easier for parties to get justice.
>
> This changed attitude was reflected in the remarks of Lord Collins MR about 70 years ago in *Re Coles and Ravenshear:*
>
> 'Although a court cannot conduct its business without a code of procedure, the relation of the rules of practice to the work of justice is intended to be that of handmaid rather than mistress; and *the court ought not to be so far bound and tied by rules, which are after all only intended as general rules of procedure, as to be compelled to do what will cause injustice in the particular case*.' (Emphasis added.)

[36] The classic case is of course, *Megat Najmuddin Dato' Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002) 1 MLJ 385, where the Federal Court, through the late Tan Sri Mohtar Abdullah FCJ, who said:

> This was a clear case of where injustice had been done to the appellant who had been denied his right to have his appeal heard on its merit. This court had inherent powers to hear any application to prevent an abuse of the process of the court.

[37] And in obiter, the learned FCJ said:

> A judge should not be so besotted by the rules that his sense of justice and fairness becomes impaired because of his blinkered fixation on technicalities of the rules and the cold letter of the law.

[38] and went on to say strongly that:

> The duty of the Federal Court, as the apex Court, to ensure that justice is done outweighs any procedural technicality preventing it from being done. When a case is brought before the Federal Court, the Court is so seized of the jurisdiction over the case. So seized, the Federal Court must decide the case in the interest of justice, to redress wrong and uphold the right, uninhibited by the technicalities strewn in its path.

[39] The stance taken by the courts as reflected in the above-mentioned cases, is subsequently manifested in the amendments made to Rules of the High Court 1980, namely the new O 1A and O 2 r 3, which came into force on 16 May 2002, vide RHC (Amendment) 2002 (PU(A) 197/2002).

Order 1A RHC reads as follows:

In administering any of the rules herein the court of a judge shall have regard to the justice of the particular case and not only to the technical con-compliance of any of the rules herein.

Order 2 rule 3 RHC reads as follows:

A court or judge shall not allow any preliminary objection by any party to any cause or matter or proceedings only on the ground of non-compliance of any of these Rules unless the court or judge is of the opinion that such non-compliance has occassioned a substantial miscarriage of justice.

[40] The power of the High Court for preservation of property is also set out in para 6 of the Schedule to the Court of Judicature Act 1964, which reads as follows:

6 Preservation of property

Power to provide for the interim preservation of property the subject-matter of any cause or matter by sale or by injunction or the appointment of a receiver or the registration of a caveat or a lis pendens or in any other manner whatsoever.

[41] These are additional powers, given under s 25(2) of the said Act.

Ruling on procedure

[42] Having considered the submissions by both parties, and having considered the relevant law and case laws, I conclude that procedurally the defendant was not wrong in invoking O 92 r 4 to make the application before the court.

Conclusion and decision

[43] Having identified that the issue is on status quo and the need to preserve so by way of an injunction, I followed the principles as enunciated in the English case of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 and in the Malaysian case of *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193.

[44] Having had the opportunity to read through the voluminous bundles of affidavits and exhibits filed herein in the form of Kertas Mahkamah 110 and Kertas Mahkamah 137 and also all the other documents and affidavits pertaining and relating to this application, prior to the actual hearing, I was able to understand the nature and history of the case.

[45] I am also satisfied that I have the jurisdiction and powers by virtue of the combined effect of O 92 r 4 of the RHC; para 6 of the Schedule to the Court of Judicature Act 1964, and O 1A of the RHC, to grant the order applied for to preserve the status quo pending disposal of the suit. I am also

mindful that the application for the consequential order to maintain status quo, and in the course of it, to give vacant possession to the defendant, is not a remedy in addition to or in contrast with those already prescribed under substantive law.

[46] I therefore allowed the defendant's application as prayed in Kertas Mahkamah No 110, with costs in the cause.

Application allowed.

Reported by Mariette Peters-Goh